

Draft Minutes
Delta Protection Commission Meeting
Thursday, July 23, 1998

1. Call to Order/Attendance. The meeting was called to order at 6:45 p.m. Commissioners present included: Barber, Brean, Broddrick, Calone, Curry, Chairman McCarty, Vice Chair Mello, Potter, Rhodes, and Sanders. Absent were Commissioners: Cabaldon, Canciamilla, Ferreira, Harris, McGowan, Nottoli, Salmon, Thomson, and Yates.

2. Public Comments. There were no public comments.

3. Minutes of the May 28, 1998 Meeting. On a motion by Vice Chair Mello, and a second by Commissioner Calone the draft minutes were approved. Commissioners Barber, Curry, and Rhodes abstained.

4. Chairman's Report. Chairman McCarty said the next meeting is scheduled for Thursday, September 24, 1998. He said upcoming Delta events include: the Pear Fair in Courtland on Sunday, July 26, the Catfish Jubilee in Walnut Grove on Sunday, August 30, and Coastal Clean Up Day on September 19.

SB 1075, legislation to extend the sunset date of the Commission, was taken off the Governor's desk to allow for possible changes to the language in the bill to clarify the Commission's role with CALFED. Chairman McCarty said no discussions are ongoing and said he would represent the Commission's views in any meetings that might be called. He added that staff has not scheduled any Subcommittee meetings about the future of the Commission, and will not until the legislation has been signed by the Governor.

5. Attorney General's Report.

Chairman McCarty said that after the last meeting, the AG's office prepared the revised waiver which includes the "ethical wall" provision. He said that because he was leaving on vacation, he asked Ms Aramburu to sign on behalf of the Commission. A copy of the signed waiver was included in the mailing.

Carla Caruso, substituting for Dan Siegel, distributed a memo responding to a question raised by the Commission regarding the definition of the phrase "historically subject to flooding".

Ms Caruso said the term was used in the case: *Akins vs the State of California*; the AG's office filed an amicus brief on behalf of the Commission. The issue is whether government agencies are strictly liable for damages on private lands that arise from publicly constructed and maintained flood control projects, or whether a reasonableness test should apply. The Court determined the reasonableness test should be applied only if the lands are historically subject to

flooding. Ms Caruso said the "past" does not mean before any humans touched the land, but refers to before the flood control device in question was constructed. She said the reasonableness test only applies if the properties were historically subject to flooding, and if they flooded in the absence of the project.

6. Executive Director's Report. Ms Aramburu reported on upcoming meetings including: a Fish and Wildlife Service public meeting to discuss their proposal to acquire lands and manage them as a National Wildlife Refuge on Tuesday, July 28, 1998 [Lands under consideration include: Yolo Bypass, Little Holland Tract, Liberty Island, Liberty Farms, Moore Tract, Hastings Tract, Prospect Island, and Upper and Lower Egbert Tracts]; two public CALFED meetings in the South Delta on Monday, July 27 at the Roberts Union Farm Center and on Wednesday evening September 9 in Stockton in association with a Bay Delta Advisory Council meeting; and the San Francisco Estuary Project's State of the Estuary Conference on March 17, 18 and 19, 1999 in San Francisco.

Ms Aramburu announced the Commission has a new e-mail address with the local telephone provider which will be much less expensive; Prop 204 Delta Tributary Watershed Program Phase II applications are due August 14 (\$4.3 million); Conservation Program of the Packard Foundation has announced a multi-year, \$175 million program called "Conserving California Landscapes", including the Cosumnes River watershed. She said she and Lori Clamurro have attended numerous CALFED meetings. In addition, staff has attended: Resources Agency's Levees and Habitat Advisory Committee; Canal Ranch/Beaver Slough Habitat Improvement Project (RD 2086) Site Visit; CVPIA Restoration Fund Projects Meeting; Yolo Bypass Wildlife Area Site Visit; Grasslands Bypass Project Oversight Committee; San Joaquin Council of Governments Census Data Work Shop; Packard Foundation Grants Meeting; Delta Levee Road Task Force; Delta In-Channel Islands Work Group; Mosquito Abatement Districts regarding regional guidelines for restoration of wetlands; Sacramento County Planning staff regarding planning and permitting issues in the Primary Zone; briefing on Agricultural Task Force for Resource Conservation and Economic Growth in the Central Valley; and Contra Costa County LAFCO Meeting re: Oakley.

She said the National Geodetic Survey and U.S. Geological Survey prepared a new three dimensional geodetic-control network using G.P.S. technology and in the future, the measurements in the Delta will incorporate this new datum; EBRPD has completed internal review of the agreement to be forwarded to the remaining floating duck blind owners in Big Break and EBRPD has signed an option on the water-covered lands in the western half of Big Break; the California Delta Chambers has a new Delta web site-<http://www.californiadelta.org>; the Beaver Slough Habitat Improvement Project (RD 2086) to create a total of one-half mile of new waterside berms for shaded riverine aquatic habitat has recently been constructed; Winter Island will be an upland disposal site for material dredged by the Corps of Engineers from Suisun Channel and the material will be used to bolster its levees and protect the managed wetland habitat.

Ms Aramburu reviewed material included in the Commission packet: a letter from Lester Snow acknowledging receipt of the Commission's comments on the DEIR; summary of the public hearings on the CALFED DEIR; and a memo describing a proposal to incorporate a new city of Oakley in Contra Costa County. She added that if the City is approved, the Commission should ask the Legislature to include a reference to the City of Oakley, or a more general reference to "other cities that may be incorporated" to the Delta Protection Act of 1992.

Commissioner Calone asked if there had been any changes to the draft agreement with the Big Break duck hunters; Ms Aramburu said she had requested a copy to review.

7. Pending Projects Memo. There were no questions or comments
8. Update on State Legislation. Chairman McCarty noted that a second memo had been distributed at tonight's meeting; there were no questions.
9. Briefing on CALFED Ecosystem Restoration Projects Funded to Date.

Chairman McCarty noted that staff has prepared a memo which describes the nature and location of Ecosystem Restoration projects in the Delta approved by CALFED in 1997 and 1998. At the next meeting, staff will update the Commission on the 1995 and 1996 ecosystem restoration projects which were funding before CALFED took over the grant program. By September, CALFED may have completed review of its most recent round of applications. Ms Aramburu introduced Rebecca Fawver of the CALFED staff.

Commissioner Potter said Commission had been told that the ecosystem restoration program and other CALFED projects would result in conversion of up to 140,000 acres of agricultural land in the Delta Primary Zone. He asked how many acres of agricultural land in the Delta Primary Zone would be affected by projects in the current round of CALFED Prop 204 grants; Ms Aramburu said two of the grants would affect agricultural land in the Primary Zone--acquisition of Liberty Island by USFW (4,750 acres) and Nature Conservancy acquisition of McCormack Williamson Tract (1,650 acres).

Commissioner Broddrick said only about 1,000 acres of Liberty Island are currently planned for conversion to tidal habitat, thus much of the remainder could continue to be farmed and would generate income to offset the cost of project management.

Vice Chair Mello asked if other lands west of I-5 had been acquired for the Cosumnes Preserve; Ms Aramburu said no.

Commissioner Curry asked Ms Caruso if CALFED makes a grant to a non-State entity, and they in turn enter into a contract with a contractor, is that contractor subject to all the conditions of a State contract, for example the disabled veterans preference; Ms Caruso said she would research the answer and make a report to the Commission at the next meeting.

10. Public and Commission Review of Proposed Criteria to be Used to Evaluate CALFED Ecosystem Restoration Projects in the Delta.

Chairman McCarty said that staff has prepared a master list of information and criteria to be used as guidelines for gathering information to present to the public and the Commission when CALFED staff requests public review of a proposed Ecosystem Restoration project. Public input will be forwarded to CALFED staff, who will work with the project proponents to ensure that valid issues raised at the public meeting will be addressed in the design and construction of proposed projects.

Ms Aramburu said Lester Snow, Director of CALFED, has asked that the Delta Protection Commission serve as a forum for public review of Delta ecosystem restoration projects. In anticipation of bringing projects to the Commission and the public for review and comment, staff prepared an outline, or list of topics that should be included in a staff report. She asked for ideas from the Commission and the public on what level and type of information should be gathered and included in a report.

Chairman McCarty said the Delta Protection Commission has made comments, orally and in writing, about the ecosystem restoration program and its meshing with the Commission's adopted Plan. He said the Commission wants to review projects in light of how all the land uses in the Delta work together. He noted that the Chairman, Vice Chairman, and CALFED staff has reviewed the draft memo.

Vice Chair Mello said the list may seem long, but the amount of information needed to review a proposed project is long. On page one, he asked what is a "valid" issue and who would determine a "valid issue"? He was told his concerns about a project on Tyler Island had no merit, and he had to continue to press for the information he needed to analyze the proposed project. Ms Aramburu said the term "valid" was used by CALFED staff; she said CALFED staff is not prepared to give all control over proposed projects to the Delta Protection Commission.

Chairman McCarty said that because the Delta Protection Commission has an appeal authority over local government actions, its conceivable that the Commission could end up with an appeal over a project approved and/or funded by CALFED.

Commissioner Potter said in the years the Delta Protection Commission has been meeting, he has never heard one of the Commissioners raise an invalid issue, and hopes CALFED staff would respect the Commission's comments.

Ms Aramburu noted that a member of the public may raise a concern that CALFED staff may deem "invalid".

Vice Chair Mello asked if "increased levee erosion" on page three refers to increased fetch and wind erosion; Ms Aramburu said yes.

Commissioner Potter suggested that in the Background section, description of related projects and known opposition should be added.

Commissioner Broddrick, responding to the issue of valid vs invalid comments on the Tyler Island project, said there needs to be education on various issues, debate, and dialog, as was the case with the development and adoption of the regional plan. He said all comments are valid, but the final decisions reached may not be one with which everybody concurs.

Chairman McCarty asked for public comments.

Sally Shanks, Staten Island, said she had just received the memo at the meeting and commented that there are small projects, such as brood ponds, habitat improvements in corners of islands, etc., which would not need such a detailed review. She said subjecting small projects to this level of review may keep landowners from pursuing projects. She said she hopes that a process could be developed to allow small projects to proceed quickly and easily.

Commissioner Potter said the list should not impact the project proponents; the burden of preparing the analysis lies with staff. Ms Aramburu said she thinks that CALFED staff may be seeking public review and comments on the larger, more controversial projects.

Chairman McCarty said the list is intended to define the information that the Commission wants staff to research before the Commission reviews a project to determine if a proposed project fits with the Commission's adopted Plan for the Delta. The list is not an application that must be filled out and submitted to the Commission, rather it is the type of information the Commission thinks is adequate and valuable to have prior to project review.

Dick Daniel, Director of the CALFED Ecosystem Restoration Program, said the list includes the same type of information that is being identified by members of the public commenting on the CALFED environmental documents as needed information. He said the response to comments is noting that this type of detailed information is what will be developed for specific projects. He agreed that developing this level of detail on projects will not be a burden and will be the task of CALFED or the CALFED implementing entity. He said there should not be a chilling effect on applications for smaller projects.

Ms Aramburu suggested that the Commission NOT formally adopt proposed list, but that the Commission accept the list as a first step in developing a review process in partnership with CALFED.

Chairman McCarty said there seems to be consensus of support of the list.

11. Briefing on Alternative Proposals for CALFED Ecosystem Restoration Program in the Delta.

Ms Aramburu, referring to a posted map, said a group of Delta "stakeholders" has been working to develop a list of sites suitable and appropriate for restoration and /or enhancement through the CALFED Ecosystem Restoration Program (ERP). The "stakeholders" include representatives of North, Central and South Delta Water Agencies, Natural Heritage Institute, and the Delta Protection Commission staff. The group has been working to develop a list of sites to forward to CALFED's Bay Delta Advisory Committee and the CALFED staff. The sites would meet the goals of the ERP, and would minimize retirement of productive agricultural lands in the Delta, and focus on publicly-owned lands and water covered areas. The memo includes a draft of a list of sites, three corridors for riparian restoration, and ideas associated with wildlife-friendly agriculture. The memo was presented to the CALFED Levees and Channels Work Group on July 22, 1998, and will be presented to BDAC at its September meeting to be held in Stockton. The group members are seeking public and Commission input and suggestions to incorporate into this list. She introduced Tom Zuckerman, Central Delta Water Agency; Greg Thomas, President of the National Heritage Institute; John Cain, Environmental Planner at the National Heritage Institute --who prepared the maps, and also present was Dick Daniel, Ecosystem Restoration Program Coordinator for CALFED. Ms Aramburu reviewed the memo and attached maps.

Vice Chair Steve Mello said Oxford Slough aka Duck Slough (page five) is a non-leveed canal across an island which would not seem appropriate as a riparian corridor. On page nine, Item Six regarding compensation of costs associated with wildlife friendly agriculture, he said the costs of flooding--such as creating temporary dikes, getting winter water onto a site, and managing that water should be included.

Tom Zuckerman, Central Delta Water Agency, said that about 2-1/2 years ago Delta interests became concerned about the number of acres being considered by CALFED for conversion from agriculture to habitat and those parties started working together to develop alternative ideas. He said it's quite a revelation to map the lands in public ownership, and private land opportunities which appear to be supported by the landowners. He said the ideas are still under development and said the matter is before the Delta Protection Commission to allow for public review and input of the alternative program. He said he has been talking with CALFED staff regarding the riparian corridor concept. Regarding wildlife friendly agriculture, he says many of the concepts are already being implemented by landowners and could easily be expanded to other agricultural lands in the Delta. He said the group wants to include ideas from lots of parties to ensure this is not a program imposed from the top down, but one that has been aired before the Delta community and includes feedback. He asked for input tonight and in the near future, with the intention of making a presentation to BDAC in September.

Chairman McCarty asked regarding managed wetlands within levees, why converted lands on Mandeville, the permanent ponds on Brack Tract, and the permanent habitat on Venice are not included in the listing; Mr. Zuckerman said the group has been working on the larger scale areas and the mapping has just recently been completed. He said the mapping is not complete, and eventually it would be great to develop reclamation district by reclamation district mapping. Mr. Zuckerman said the group is also trying NOT to design habitat projects, rather to create an inventory of opportunities. Ms Aramburu added that the maps do not include privately owned lands with habitat that do not have a conservation or other easement.

John Cain, Natural Heritage Institute, described the mapped information using the map on display. He agreed that the maps will change in the future with the inclusion of additional information. He supported this process as a way to allow local Delta interests to be pro-active and help shape the CALFED process.

Dick Daniel, CALFED, agreed that this is the type of information and response that CALFED wants and needs to refine the CALFED program. He said CALFED doesn't want to remove agricultural land, CALFED wants to restore habitat. He said CALFED's program is programmatic and does not address specific sites or parcels, and he will be working with the mapped information to see if CALFED can merge the two ideas into a program. He cautioned that some lands characterized as publicly owned lands were purchased for a specific purpose, for example, Sherman Island was purchased by the State Water Contractors for some very specific purposes which may be compatible with CALFED; CALFED will have to approach them and ask to buy those lands as they would any other landowner. He wants to continue to work with the group, and says he thinks they can accommodate virtually all of the habitat work CALFED is looking for on these public lands if CALFED can get willing participants. He noted that the CALFED designation of wildlife friendly agriculture is not intended to remove any land from agriculture, but rather to compensate growers for relatively minor changes that they could incorporate into their agricultural practices, such as delayed tilling from fall to spring. He said CALFED is willing to pay over and above cost for these practices, and that could benefit the farmers.

Commissioner Curry asked if an old weir on a stream, which may be a barrier to boaters and could also be a barrier to wildlife, could be removed with funding from CALFED; Mr. Daniels said there would have to be a nexus between the proposed action and habitat restoration. For example, they have talked to the Corps and State Lands about removing old wrecked boats on channels islands. Commissioner Curry said the Department of Boating and Waterways now has an abandoned vessel removal program. Mr. Daniels said much of what CALFED will do is supplement on-going programs such as the vessel removal program and the water hyacinth program. Commissioner Curry said on the Cosumnes River there are at least four weirs, one which contributed to the death of boaters recently. Commissioner Broddrick said that at low flows the weirs may be barriers to fish passage.

Vice Chair Mello asked if the wildlife friendly agriculture program is geared toward migratory waterfowl; Mr. Daniels said yes, and to upland game birds and others. Vice Chair Mello mentioned North Delta Conservancy's idea of purchasing agricultural conservation easements to ensure that lands stay in coarse and cereal grains; purchase of an easement would provide capital to ensure the farmer continues to farm those crops. He asked why this idea was not included. Mr. Daniel said that seems to go beyond the scope of the Ad Hoc groups report. He said many on the CALFED staff support that idea and would be interested in purchase of easements.

Commissioner Potter asked if CALFED has authority or budget to NRCS-type programs; Mr. Daniel said CALFED has no authority, just the authority resting with the CALFED agencies, but that type of program and funds are currently allocated to NRCS, and CALFED would augment the budget and help direct the program. Commissioner Potter asked if there must be legislation to implement such a program in the long term; Mr. Daniel said upon certification of the environmental document, \$390 million will be released for expenditure to carry out the program described in the environmental document and the appendices, which includes the ERPP. The funds would be expended by the Secretary of Resources who can distribute the money to any state, federal or public entity to carry out the program. He said CALFED has also received federal funds. He said funding and authority has been approved for early implementation of the Category III programs.

Commissioner Broddrick said it is the issues associated with endangered aquatic species that have resulted in the CALFED process. He noted that while habitat enhancement for the terrestrial species will be a value added benefit of CALFED, the primary focus of the habitat conservation program in the eyes of the US Fish and Wildlife Service and Department of Fish and Game Endangered Species sections is long term, e.g. 50 year programs. Lesser actions would only result in incremental improvements which might not result in assurances for the State's water supply.

There was no public comment.

Mr. Zuckerman asked that additional comments be forwarded to Ms Aramburu.

Commissioner Potter said he is impressed by the work of the Ad Hoc group. He suggested that additional communication between the group and CALFED should proceed. Mr. Zuckerman said process has to start at the farm level; each landowner has ideas about enhanced land stewardship.

Commissioner Broddrick complemented the "bottom up" process, noting that it is important to have confidence in the process and in the product. He asked if there is a plan to address crop conversion, he noted that there has been a lot of crop conversion and conversion will continue from grains with high wildlife values to high value crops, such as cherries, pears, etc; Mr. Zuckerman said several years ago he had presented to the Commission a possible easement

program to protect Delta agriculture from urban encroachment and to protect lands from conversion to uses that lessen habitat values. He said those actions may need to be part of an overall program, especially for lands which are susceptible to conversion to urban development or conversion to vineyards. He said the current memo focuses on the Central Delta's values associated with migratory bird populations; land conversion is not as big an issue in those areas. The Primary Zone should no longer be susceptible to urban development with the Commission in place. He said his personal view is that there should be an active conservation easement program in and on the fringes of the Delta.

Commissioner Broddrick said regarding the Department of Fish and Game lands that are identified as not managed, the lands were purchased as funds became available. He said funding long term enhancement and management is very difficult and expensive. Mr. Zuckerman supported enhancement of already publicly-owned land prior to acquisition of additional privately-owned land. Commissioner Broddrick pointed out the need for funding for the enhancement and management programs.

Commissioner Potter commented that the Department of Food and Agriculture is strongly supporting mitigation for the change of use of agricultural lands to habitat. He said the concepts in the draft memo should emphasize the multipurpose nature of co-use of agricultural lands for habitat.

Chairman McCarty thanked the representatives of the Ad Hoc group to continue the effort, and continued to direct staff to assist in the process. He thanked Dick Daniel for working with the group.

12. Commissioner Comments/Announcements.

Commissioner Potter commented regarding the City of Oakley incorporation, amendments to the Delta Protection Act of 1992 should only address the City of Oakley. Regarding Delta levee roads, he mentioned three concepts under consideration for funding: Water Resources Development Act of 1998; CalTrans bill before the Legislature; and the proposed Water Bond.

Commissioner Broddrick said, regarding the pending project known as Delta Wetlands, the lawsuit regarding the biological opinion appears to be resolved and the biological opinion will be reissued in the near future. The project will then return for consideration before the State Water Resources Control Board.

Ms Aramburu said the issue of the City of Oakley incorporation would return to the Commission in November, and she said the Commission had hosted a banner for Clean Boating Week. She said the memo regarding the North Delta Wildlife Refuge had not been distributed, and was available at the staff table.

13. Adjournment. The meeting was adjourned at 8:30 p.m.